

BEST AVAILABLE COPY

REMARKS

Status of the claims. Claims 1-12 are in the application.

5 Claims 1-9, 11 and 12 were rejected. Original claims 1-8, 11 and 12 are presented again. Claim 9, as herewith further amended, is again presented. Claim 10 is objected to only as depending from a rejected claim, and would be allowable if rewritten independently.

10 Section 103 rejections of claims 1-8, 11 and 12 over Braverman '748 in view of Margulies et al. '361 and Hewelt et al. '455

15 Reconsideration by Examiner is requested.

Turning first of all to Braverman '748, this citation includes a tray that is substantially similar to the tray of the present application apart from the fact that it includes a series of linear perforations 36 that enable the tray to be divided into a number of individual units. This is important because it means that the dispensing container of Braverman '748 is intended to be used in a completely different way to both the present invention and the dispensing containers described in Margulies '361 and Hewelt '455. Each individual unit of the dispensing container of Braverman '748 includes a discrete cavity 26 for receiving an article such as a tablet, capsule, pill etc. and a surrounding flange which is equivalent to the generally planar top surface of the present invention.

30 The closure means 20 is also substantially similar to the cover

film of the present application because it has a two-part construction with a cover sheet 40 that is adhered to a liner sheet 44 by a peelable adhesive. The cover sheet 40 includes linear perforations 42 that in use are aligned with the linear perforations 36 provided in the tray. The liner sheet 44 includes a series of circular portions 52 that are die-cut into the liner sheet so that they remain adhered to the cover sheet 40 when the remainder of the liner sheet is peeled away. The circular portions 52 are therefore equivalent to the patches of the present invention and prevent the articles that are held in the discrete cavities from coming into contact with the peelable adhesive on the underside of the cover sheet.

Before the contents of a particular one of the discrete cavities 26 can be accessed, the individual unit containing the discrete cavity must be separated from the rest of the dispensing container by dividing it along the relevant linear perforations in the tray and the cover sheet. The part of the cover sheet 40 which is adhered to the flange of the individual unit can then be peeled away by grasping the corner that overhangs the cut-away portion 60 of the tray. Fig. 5 of Braverman '748 is actually very misleading in this respect because it suggests that the whole of the cover sheet can be peeled away from the underlying tray with the possibility that the linear perforations might be torn in the process. This is not supported by the description and it is my understanding that the cover sheet 40 has been shown in this way in Fig. 5 for the purposes of better illustrating the underlying parts of the tray only.

With reference to the paragraph at the bottom of page 2 of the Official Action, Applicant would argue that the linear perforations 42 in the cover sheet 40 are not pre-formed tear lines within the meaning of claim 1. This is because the linear perforations 42 do not define tear-off portions to retain the articles in the discrete cavities 26 until they are removed by tearing along the tear lines. The linear perforations 42 are not torn to provide access to the articles in the discrete cavities 26 but are actually torn in a preliminary step when the individual units are separated from the rest of the dispensing container. Once an individual unit has been separated, the linear perforations 42 do no more than define peel-off portions of the cover sheet 40. This interpretation also means that Braverman '748 does not disclose an associated lug portion because this is defined in claim 1 as being part of each tear-off portion of the cover film.

On page 3, lines 1 and 2 of the Official Action, Examiner states that the linear perforations 42 in the cover sheet of Braverman '748 do not follow the shape of the periphery of the cavities. As explained above, the linear perforations 42 of Braverman '748 are merely included to allow the dispensing container to be divided into the individual units in such a way that each part of the tray has its own associated part of the cover sheet. Thus, it is believed to be disingenuous for Examiner to argue that it would be obvious for the skilled person to apply the teaching of Hewelt '455 and modify the linear perforations 42 to correspond to the shape of the periphery of the discrete cavities 26 when what is actually needed is for each of the individual units to be provided with an additional pre-formed tear line to define a tear-off portion.

(Clearly, if the linear perforations 42 are moved such that they are no longer coincident with the linear perforations 36 in the tray then the dispensing container cannot be divided.)

5 No objective motivation can be seen for the skilled person to make such a modification when the dispensing container of Braverman '748 already uses a different but seemingly entirely satisfactory method for accessing the contents of the discrete cavities by peeling off the individual cover sheets. Adding pre-
10 formed tear lines to the existing linear perforations 42 is just not necessary on a technical level and would require significant changes to the manufacture of the cover sheet. Moreover, it is only with the benefit of hindsight that the skilled person would see how the additional pre-formed tear lines could in some way
15 be incorporated in the cover sheet 40 without interfering with the circular portions 52 of the liner sheet 44 that remain adhered to the cover sheet.

20 Even if the skilled person were motivated to introduce the additional pre-formed tear lines then it is not clear how the lug portions (the corners of the individual cover sheets that overhang the cut-away portions 60 of the flange) might be retained. It would mean that at some point the additional pre-formed tear lines would have to be coincident with the existing
25 linear perforations 42 and this would create substantial technical difficulties. For example, it might lead to the pre-formed tear lines being accidentally torn when the dispensing container is divided into individual units by tearing along the linear perforations in the tray and the cover sheet. Hewelt '455
30 does not suggest the use of lug portions and it therefore seems inconsistent that the skilled person would try to apply the

teaching of Hewelt '455 after further adapting it to cover the corners of the individual cover sheets that overhang the cut-away portions 60. Either the skilled person would not combine these two documents together (which we assert because of the lack of motivation to do so and the straightforward technical incompatibility) or the skilled person would apply the teaching by introducing additional tear-lines that extend only around the periphery of the discrete cavities. Put another way, adapting the pre-formed tear lines to include lug portions would require a further motivation that is not present in Braverman '748 or Hewelt '455.

Turning now to the upwardly extending protrusion positioned to be located beneath each lug portion. Examiner accepts that this feature is not disclosed in Braverman '748 but argues that it would be obvious to the skilled person to replace the cut-away portions 60 with the protrusions described in Margulies '361 (see page 3, 14 to 19 of the Official Action). As shown below, it appears that Examiner has not fully understood the construction of the dispensing container of Braverman '748 and in particular the fact that it has to be divided into individual units along the linear perforations in the tray and cover sheet.

Margulies '361 describes a dispensing container with two rows of cavities. One row is used to retain the product while the other row can be selectively inverted by the user to raise a lug portion formed in a cover sheet. Examiner is suggesting that it would be obvious to the skilled person to replace the circular cut-away portions 60 with downwardly extending blisters that can be selectively inverted by the user. The circular cut-away portions 60 of Braverman '748 are coincident with the

linear perforations 36 in the tray. The blisters would also be coincident with the linear perforations in the tray and this would basically prevent the dispensing container from being divided into individual units. Replacing the cut-away portions
5 60 with blisters according to the teaching of Margulies '361 would therefore result in a dispensing container that works in a way fundamentally different from that described in Braverman '748.

10 Therefore, two citations are technically incompatible with each other - the skilled person would simply not be motivated to make a modification that would be contrary to the direct teaching of Braverman '748 concerning the division of the dispensing container into individual units.

15 The use of blister seems to work well with the double-row type of construction described in Margulies '361. However, the location of the circular cut-away portions 60 of Braverman '748 means that inverting a blister would raise the corner parts of
20 all four of the adjacent individual cover sheets at the same time. The ability to provide each individual unit with its own blister would require further extensive modification to the design and construction of the dispensing container and therefore goes far beyond the simple combination of Braverman
25 '748 and Margulies '361. There is no suggestion in Margulies '361 that a blister can be returned to its original position once it has been inverted. Permanently raising more than one corner with a single blister is simply not acceptable for articles such as tablets, capsules and pills etc. because of the
30 risk that more than one of the individual cover sheets might be accidentally peeled off so that an incorrect dosage is

dispensed. Even if the other cover sheets remain adhered, raising the corners might allow air or moisture to enter the cavities such that the quality of the contents might be degraded.

5

It is necessary here to point out that Margulies '361 actually requires the user to invert the blister. However, claim 1 defines that the top surface of the tray has an upwardly extending protrusion beneath each lug portion to bend that lug portion upwardly out of the plane of the remainder of the cover film *when the cover film is secured to the generally planar top surface*. In other words, the protrusion should bend the lug during the application of the cover film to the tray. If the circular cut-away portions 60 of Braverman '748 are replaced with the blisters of Margulies '361 then the lug portions will not be bent upwardly when the cover sheet 40 is adhered to the tray but only prior to dispensing when a blister is inverted by the user.

10

15

20

With reference to the other claims, it is noted above that there is no mention in Braverman '748 that the circular portions defined by the adhered parts of the liner sheet should have high vapor barrier properties. Thus, claim 5 provides for a container according to claim 4, wherein the tear-off portions of the cover film have low vapor transmission properties in the areas which in use overlies the cavities, those low vapor transmission properties being created by patches with high vapor barrier properties shaped and sized to overlie the cavities and adhered to the underside of the cover film by the same layer of peelable adhesive as that which in use adheres the cover film to the top surface of the tray.

25

30

13

Elliott, Howard
S.N. 10/695,619- Filed October 28, 2003
Atty Docket No. 85328-88008
834354v3

With reference to claim 6, even if the skilled person were motivated to include the additional tear lines, it is not possible to believe that it would necessarily follow that the circular portions of the liner sheet would be extended under the lug portions. Claim 6 should accordingly be held allowable.

Claim 7 should be held allowable with claim 6 from which it depends.

In claim 8 it is required that the sheet of barrier film has a further pre-formed tear line that exposes a location anchorage area of peelable adhesive. This exposed part of the cover film is therefore adhered to a part of the top surface of the tray before the rest of the barrier film is removed and the cover film is smoothed down over the tray. The Examiner has referred to the pre-formed tear line 56 of Braverman '748 but this extends through the cover sheet 40 and not the liner sheet 44. It simply serves as a bend line to effect the separation of the cover sheet 40 and the liner sheet 44 and does not expose a location anchorage area of peelable adhesive. Thus, the combination of references fails to provide a teaching to the skilled artisan of the feature, as claimed, that the "barrier film has a further pre-formed tear line close to one edge thereof to define a tear-off portion which when removed exposes a location anchorage area of the peelable adhesive on the underside of the cover film, for adhering an edge portion of the cover film to an edge portion of the tray before peeling away the majority of the barrier film and adhering it over the tray cavities." Claim 8 should accordingly be held allowable.

Section 103 rejections of claims 9 over Braverman '748 in view of Margulies et al. '361 and Hewelt et al. '455 further in view of March '285.

5 Examiner contends that Braverman-Hewelt-Margulies discloses the claimed invention except for the locating means on the tray and cooperating means on the cover. Again, to summarize, it must be said that (1) the dispensing container of Braverman '748 does not include pre-formed tear lines within the meaning
10 of claim 1, from which claim 8 ultimately depends; (2) the dispensing container of Braverman '748 does not include a tear-off portion corresponding to the periphery of the or each cavity to retain the articles in that cavity until it is removed by tearing along its tear lines;
15 (3) the dispensing container of Braverman '748 does not include a lug portion within the meaning of claim 1; (4) the notional combination of Braverman '748 and Hewelt '455 is not workable or realistic and cannot be accepted because the skilled artisan would not modify the linear perforations 42 and would not
20 introduce additional preformed tear lines, all as pointed out in detailed respect above; and (5) the notional combination of Braverman '748 and Margulies '361 is not workable or realistic and is not acceptable because the skilled artisan would not replace the cut-away portions 60 with blisters because this
25 would prevent the dispensing container from being divided according to the teaching of Braverman '748.

Therefore, it cannot be convincingly said that the Braverman-Hewelt-Margulies combination provides the invention
30 except for the locating means on the tray and cooperating means on the cover. The combination of references fails in this

15

Elliott, Howard
S.N. 10/695,619- Filed October 28, 2003
Atty Docket No. 85328-88008
834354v3

regard, and so claim 9 should be patentable for the same reasons as claim 8 over such combination further taken with March.

5 In addition, Examiner refers to claim 9 with regard to Section 112, 6th paragraph. Claim 9 is amended so as not to invoke the provisions of that paragraph, and now sets forth "A container according to claim 8, wherein the tray has upstanding cover sheet location projections formed there on to be cooperatively received by the cover sheet, providing accurate
10 location of the cover sheet over the tray with the tray cavities and cover sheet tear-off portions in register before adhering the cover sheet to the tray."

15 As thus more clearly set forth, and for the reasons set forth above, claim 9 is submitted to be properly allowable in the application.

Claim 10

20 It is gratefully acknowledged that claim 10 has been objected to only as depending from a rejected claim, and would be allowable if rewritten independently. As claim 10 relates back to claim 5, and for the reasons set forth regarding claim 5, claim 10 should be allowable without being rewritten.

25 Claims 10 and 11

Each of claims 10 and 11 is dependent from claim 1. For the reasons set forth above regarding claim 1, in that the Braverman-Hewelt-Margulies combination as interpreted by Examiner fails to provide to the person having ordinary skill in
30 the art a suggested teaching of the claimed combination, these

claims are submitted to be properly patentable in the application.

In summary, with the present amendments, claims 1-12 are respectfully submitted to be patentable in the application and
5 should be held allowable without further amendment.

While the undersigned believes that the foregoing resolves all remaining issues, if Examiner believes there is any remaining issue which could be readily resolved or other action
10 could be taken to advance this application, such as Examiner's amendment, it is requested that Examiner please telephone the undersigned. If necessary to effect a timely response, this paper should be considered as a petition for extension of time of length sufficient to be considered timely.

15

Any fees required, to the extent not covered by payment submitted herewith, are authorized to be charged to Deposit Account No. 07-1985.

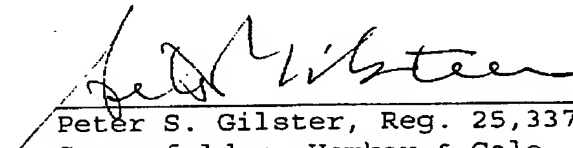
20

Respectfully submitted,

Date:

7 Nov. 2005

25


Peter S. Gilster, Reg. 25,337
Greensfelder, Hemker & Gale, P.C.
Intellectual Property Group
10 South Broadway, Suite 2000
St. Louis, Missouri 63102
(314) 241-9090
Attorneys for Applicant
Customer Number: 22807

30

35 Attachment(s): Transmittal with Certification of Fax Transmittal

17

Elliott, Howard
S.N. 10/695,619- Filed October 28, 2003
Atty Docket No. 85328-88008
834354v3

**This Page is Inserted by IFW Indexing and Scanning
Operations and is not part of the Official Record**

BEST AVAILABLE IMAGES

Defective images within this document are accurate representations of the original documents submitted by the applicant.

Defects in the images include but are not limited to the items checked:

- ☐ **BLACK BORDERS**
- ☐ **IMAGE CUT OFF AT TOP, BOTTOM OR SIDES**
- ☐ **FADED TEXT OR DRAWING**
- ☐ **BLURRED OR ILLEGIBLE TEXT OR DRAWING**
- ☐ **SKEWED/SLANTED IMAGES**
- ☐ **COLOR OR BLACK AND WHITE PHOTOGRAPHS**
- ☐ **GRAY SCALE DOCUMENTS**
- ☐ **LINES OR MARKS ON ORIGINAL DOCUMENT**
- ☐ **REFERENCE(S) OR EXHIBIT(S) SUBMITTED ARE POOR QUALITY**
- ☐ **OTHER:** _____

IMAGES ARE BEST AVAILABLE COPY.

As rescanning these documents will not correct the image problems checked, please do not report these problems to the IFW Image Problem Mailbox.